

# **EXHIBIT D**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE JDS UNIPHASE SECURITIES  
LITIGATION

CIVIL ACTION NO.  
02-1486 (CW)

**REBUTTAL REPORT OF SCOTT D. HAKALA, PH.D, CFA**

**I. Background and Qualifications**

1. I was asked by counsel for the Plaintiff to review and comment on the Opening Expert Report of Allan W. Kleidon ("Kleidon Report"). In addition to the information set forth in my expert report, I have reviewed the information produced by Dr. Kleidon relating to his expert report and reviewed and considered in the expert reports of Arthur R. Wyatt, Steven L. Henning, James H. Vander Weide, Terrence L. Barnich, and Wayne R. Guay.

2. My commentary in this report will be more brief and conceptual in light of the detail in my expert report already addressing many of the issues I have regarding Dr. Kleidon's report and analysis. I expect that Dr. Kleidon's rebuttal report may be more extensive and reserve the right to reply if necessary or respond to any information and issues he might identify in his rebuttal report.

3. Plaintiff has filed an extensive set of interrogatory responses outlining the false and misleading statements and omissions. Additionally, various partially corrective news events and disclosures were identified in the Second Amended Complaint and in my expert report. Beyond listing some of the events in Exhibit 4 to the Kleidon Report, the

related to the Plaintiff's claims, his analysis largely misses the point and fails to find loss causation because he failed to look for it in a comprehensive and systematic manner.

22. Additionally, individual events do not have to be statistically significant to be material to investors. A series or group of events with each individual event not statistically significant can, nevertheless, be collectively, or jointly, significant and, therefore, must be included in the analysis in order to arrive at a consistent and unbiased interpretation of the facts. In the case of a series of industry leakage events, most of the identified relevant events are unlikely to be individually statistically significant, but they often become jointly very significant and extremely material when analyzed as a group. This is well-known in the more highly regarded statistics literature and in the underlying philosophy of statistics.<sup>5</sup> Dr. Kleidon's loss causation and other analyses implicitly ignore this important principle and, thus, parse away much of the evidence of inflation and loss causation in this case.

23. As one additional item, I have become aware of additional share sales by Mr. Kalkhoven after August 31, 2000. I have considered those additional sales and added those to my estimate of insider trading damages in Exhibit F-Rebuttal.

Executed this 5<sup>th</sup> day of March 2007, at Dallas, Texas.



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Scott D. Hakala, Ph.D., CFA

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<sup>5</sup> See, in my expert report, footnotes 5 (page 17) and 15 and 16 (page 23). For further discussion, see Lehmann and Romano, *Testing Statistical Hypotheses*, Third Edition, 2005, pp. 56-58 ("The standard way to remove the arbitrary choice of  $\alpha$  is to report the  $p$ -value of the test..."; "A low significance level results in the hypothesis being rejected only for a **set of values** of the observations whose **total probability** under hypothesis is small..." [emphasis added]).

			<u>Dates</u>	<u>Shares Sold</u>	<u>Price adjusted</u>	<u>Proceeds</u>	<u>Inflation Percent</u>	<u>Inflation</u>	<u>Aggregate Damages</u>
<u>JOZEF STRAUS JDS STOCK SALES</u>									
Straus	11/8/1999	26,700	\$47.71	\$1,273,857	0.00%	\$0.00	\$	-	
	11/8/1999	52,944	\$47.71	\$2,525,958	0.00%	\$0.00	\$	-	
	8/1/2000	16,020	\$117.00	\$1,874,340	33.61%	\$629,892.86			
	8/1/2000	95,352	\$117.00	\$11,156,184	33.61%	\$3,749,160.05			
	8/1/2000	156,000	\$117.06	\$18,261,360	33.61%	\$6,136,933.68			
	8/1/2000	394,000	\$117.00	\$46,098,000	33.61%	\$15,491,746.98			
	8/1/2000	396,672	\$117.00	\$46,410,624	33.61%	\$15,596,807.76	\$	88,076,161.98	
	8/4/2000	4,500	\$117.69	\$529,605	33.61%	\$177,979.67			
	8/4/2000	5,200	\$118.00	\$613,600	33.61%	\$206,207.12	\$	86,453,167.44	
	8/7/2000	25,000	\$118.13	\$2,953,250	33.61%	\$992,472.60			
	8/7/2000	34,100	\$118.02	\$4,024,482	33.61%	\$1,352,472.06			
	8/7/2000	35,000	\$118.06	\$4,132,100	33.61%	\$1,388,638.29			
	8/7/2000	96,200	\$118.00	\$11,351,600	33.61%	\$3,814,831.77	\$	89,573,291.16	
	8/8/2000	210,000	\$121.19	\$25,449,900	33.61%	\$8,552,722.71	\$	59,289,753.69	
	2/1/2001	25,424	\$55.49	\$1,410,778	38.10%	\$537,458.20			
	2/1/2001	74,576	\$55.49	\$4,138,222	38.10%	\$1,576,521.50	\$	111,797,977.95	
	3/6/2001	800	\$30.06	\$24,048	25.17%	\$6,051.76			
	3/6/2001	<u>20,000</u>	\$30.00	<u>\$600,000</u>	25.17%	<u>\$150,991.97</u>	<u>\$</u>	<u>46,996,876.36</u>	
		1,668,488		\$182,827,908		\$60,360,888.96		\$482,187,228.58	
<u>KEVIN KALKHOVEN JDS STOCK SALES</u>									
Kalkhoven	11/8/1999	128,000	\$48.50	\$6,208,000	0.00%	\$0.00	\$	-	
	11/8/1999	140,000	\$47.85	\$6,699,000	0.00%	\$0.00	\$	-	
	11/9/1999	14,000	\$47.50	\$665,000	0.00%	\$0.00	\$	-	
	11/9/1999	144,704	\$46.93	\$6,790,959	0.00%	\$0.00	\$	-	
	11/10/1999	122,000	\$46.79	\$5,708,380	0.00%	\$0.00	\$	-	
	11/23/1999	50,000	\$60.67	\$3,033,500	0.00%	\$0.00	\$	-	
	11/30/1999	40,000	\$59.82	\$2,392,800	0.00%	\$0.00	\$	-	
	5/22/2000	100,000	\$83.80	\$8,380,000	33.19%	\$2,781,207.35			
	5/22/2000	130,000	\$77.65	\$10,094,500	33.19%	\$3,350,226.45	\$	28,075,185.60	
	5/24/2000	180,000	\$76.68	\$13,802,400	33.19%	\$4,580,827.73	\$	30,099,093.91	
	7/31/2000	250,000	\$117.00	\$29,250,000	33.61%	\$9,829,788.69			
	7/31/2000	250,000	\$119.50	\$29,875,000	33.61%	\$10,039,826.91	\$	200,292,342.22	
	8/4/2000	62,500	\$119.68	\$7,480,000	33.61%	\$2,513,737.42	\$	86,453,167.44	
	8/7/2000	100,000	\$119.81	\$11,981,000	33.61%	\$4,026,348.66	\$	89,573,291.16	
	8/21/2000	110,000	\$125.00	\$13,750,000	33.61%	\$4,620,840.84	\$	75,081,150.57	
	8/22/2000	100,000	\$125.10	\$12,510,000	33.61%	\$4,204,125.01			
	8/22/2000	140,000	\$124.63	\$17,448,200	33.61%	\$5,863,662.19	\$	75,027,246.86	
	8/31/2000	100,000	\$124.22	\$12,422,000	31.08%	\$3,860,416.63			
	8/31/2000	<u>200,000</u>	<u>\$120.03</u>	<u>\$24,006,000</u>	31.08%	<u>\$7,460,405.86</u>	<u>\$</u>	<u>118,214,393.08</u>	
	9/1/2000	75,000	\$124.40	\$9,329,685	\$	38.48	\$2,885,814.49	\$	57,631,836.56
	9/7/2000	285,000	\$119.42	\$34,033,446	\$	36.14	\$10,300,285.84	\$	62,049,843.70
	9/12/2000	400,000	\$110.99	\$44,394,360	\$	28.61	\$11,443,391.57	\$	116,841,241.79
	9/18/2000	200,000	\$104.73	\$20,945,000	\$	27.12	\$5,423,654.70	\$	91,974,709.31
	9/19/2000	100,000	\$105.88	\$10,587,500	\$	32.37	\$3,236,729.60	\$	113,242,271.22
	9/20/2000	25,000	\$109.00	\$2,725,000	\$	32.12	\$803,091.28	\$	118,955,864.54
	9/21/2000	100,000	\$98.85	\$9,885,000	\$	31.04	\$3,103,661.96	\$	95,670,410.31
	9/22/2000	300,000	\$105.25	\$31,574,060	\$	32.09	\$9,625,850.15	\$	110,500,640.29
	9/25/2000	200,000	\$108.38	\$21,675,620	\$	32.03	\$6,405,988.28	\$	83,932,733.93
	9/27/2000	50,000	\$104.25	\$5,212,500	\$	29.31	\$1,465,618.15	\$	144,125,520.82
	9/28/2000	75,000	\$110.13	\$8,259,375	\$	29.20	\$2,189,993.36	\$	112,420,898.18
	10/5/2000	100,000	\$95.05	\$9,505,000	\$	28.51	\$2,850,646.04	\$	63,473,599.09
	10/10/2000	50,000	\$93.44	\$4,671,875	\$	27.18	\$1,358,789.21	\$	55,956,426.06
	10/11/2000	100,000	\$90.13	\$9,012,500	\$	25.75	\$2,575,139.82	\$	98,586,271.18
	10/13/2000	100,000	\$90.07	\$9,006,880	\$	28.30	\$2,830,029.93	\$	75,486,736.83
	10/16/2000	100,000	\$95.06	\$9,506,250	\$	28.32	\$2,831,904.12	\$	65,155,794.24
	10/20/2000	350,000	\$98.65	\$34,525,950	\$	30.70	\$10,744,742.78	\$	192,140,127.59
	10/25/2000	50,000	\$100.00	\$5,000,000	\$	15.11	\$755,423.96	\$	111,895,544.32
	10/27/2000	300,000	\$80.43	\$24,127,510	\$	20.30	\$6,088,649.21	\$	126,605,942.89
	11/1/2000	100,000	\$80.51	\$8,051,250	\$	20.64	\$2,064,032.38	\$	58,812,365.10
	1/18/2001	1,000,000	\$55.13	\$55,130,600	\$	22.43	\$22,427,590.97	\$	165,644,957.88
	3/22/2001	2,100	\$3.37	\$7,087	\$	8.89	\$7,087.00	\$	69,469,749.40
	4/11/2001	<u>2,100</u>	\$2.00	<u>\$4,200</u>	<u>\$</u>	<u>5.60</u>	<u>\$4,200.00</u>	<u>\$</u>	<u>37,689,817.14</u>
		6,425,404		\$589,667,387		\$174,553,728.55		\$2,931,079,173.23	

<u>Dates Shares Sold Price adjusted</u>				<u>Proceeds</u>	<u>Inflation Percent</u>	<u>Inflation</u>	<u>Aggregate Damages</u>
<u>TONY MULLER JDS STOCK SALES</u>							
Muller	11/8/1999	40,000	\$48.75	\$1,950,000	0.00%	\$0.00	\$ -
	11/12/1999	80,000	\$48.78	\$3,902,400	0.00%	\$0.00	\$ -
	11/19/1999	40,000	\$54.79	\$2,191,600	0.00%	\$0.00	\$ -
	5/22/2000	10,000	\$82.63	\$826,300	33.19%	\$274,237.67	\$ 28,075,185.60
	5/30/2000	10,000	\$84.19	\$841,900	33.19%	\$279,415.09	\$ 26,531,447.09
	7/31/2000	35,000	\$117.41	\$4,109,350	33.61%	\$1,380,992.89	\$ 200,292,342.22
	8/1/2000	20,000	\$117.23	\$2,344,600	33.61%	\$787,928.98	\$ 88,076,161.98
	8/2/2000	20,000	\$117.00	\$2,340,000	33.61%	\$786,383.10	\$ 117,327,040.85
	8/4/2000	2,500	\$120.00	\$300,000	33.61%	\$100,818.35	
	8/4/2000	5,000	\$118.00	\$590,000	33.61%	\$198,276.08	
	8/4/2000	5,000	\$118.23	\$591,150	33.61%	\$198,662.55	
	8/4/2000	5,000	\$118.50	\$592,500	33.61%	\$199,116.23	\$ 86,453,167.44
	8/7/2000	37,500	\$120.00	\$4,500,000	33.61%	\$1,512,275.18	\$ 89,573,291.16
	8/8/2000	25,000	\$122.00	\$3,050,000	33.61%	\$1,024,986.51	\$ 59,289,753.69
	8/11/2000	50,000	\$117.08	\$5,854,000	33.61%	\$1,967,301.98	
	8/11/2000	50,000	\$119.94	\$5,997,000	33.61%	\$2,015,358.73	\$ 56,567,962.38
	8/14/2000	25,000	\$119.24	\$2,981,000	33.61%	\$1,001,798.29	
	8/14/2000	25,000	\$119.74	\$2,993,500	33.61%	\$1,005,999.06	\$ 58,468,186.14
	8/15/2000	50,000	\$119.94	\$5,997,000	33.61%	\$2,015,358.73	\$ 59,060,462.74
	8/16/2000	110	\$119.44	\$13,138	33.61%	\$4,415.21	\$ 41,861,057.63
		535,000		\$51,952,300		\$14,753,324.63	\$911,576,058.93

CHARLES JAY ABBE JDS STOCK SELLING

<u>Defendant</u>	<u>Date</u>	<u>Shares</u>	<u>Price</u>	<u>Proceeds</u>	<u>Inflation</u>	<u>Inflation</u>	<u>Aggregate Damages</u>
Abbe	2/18/2000	40,000	\$104.31	\$4,172,400	22.63%	\$944,277.35	
	2/18/2000	120,000	\$104.22	\$12,506,400	22.63%	\$2,830,387.86	\$ 8,183,967.77
	2/22/2000	80,000	\$106.22	\$8,497,600	22.63%	\$1,923,135.67	\$ 14,293,350.72
	8/1/2000	50,000	\$117.15	\$5,857,500	33.61%	\$1,968,478.20	\$ 88,076,161.98
	8/11/2000	100,000	\$117.10	\$11,710,000	33.61%	\$3,935,276.09	\$ 56,567,962.38
	2/26/2001	50,000	\$32.91	\$1,645,500	32.99%	\$542,790.47	\$ 75,517,919.76
	2/27/2001	25,000	\$29.62	\$740,500	30.24%	\$223,920.67	\$ 60,728,966.71
	2/28/2001	25,000	\$27.34	\$683,500	31.70%	\$216,674.26	\$ 88,180,012.66
		490,000		\$45,813,400		\$11,640,663.20	\$391,548,341.98